

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 4, 6-7, 10, 14-17 and 21-23 are currently being amended. No new matter is added. The amendments are made to more clearly define the invention and to correct drafting errors.

This amendment changes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-17 and 21-23 remain pending in this application.

In paragraphs 1-2 of the Office Action, claims 4-6, 9, 21 and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,637,221 (Levine). The Examiner states:

Levine discloses an ice cream machine having an auger 116 which is operated in a forward and reverse direction. See column 8, lines 46-51.

Applicant respectfully traverses the rejection.

Claim 4 has been amended to recite structure related to the ice cream input and the inclusions input. Claim 4 recites:

wherein the ice cream machine includes an ice cream input and an inclusions input, wherein liquid ice cream is provided to the ice cream input and semi-solid or solid inclusions are provided to the inclusions input.

The use of a separate inclusions input and the ice cream input provides significant advantages as described throughout the present application.

Levine does not show, describe or suggest a separate ice cream input and inclusions input. In Levine, the completed ice cream is provided in a funnel which includes materials that are to be mixed. This is a completely different structure than that recited in claim 4. Accordingly, claim 4 and its dependent claims 5, 6 and 8 are patentable over Levine.

Claim 21 has been amended in a similar manner to claim 14. Claim 21 now recites an inclusions input and an ice cream input. Accordingly, it is respectfully submitted that claim 21 and its dependent claim 22 are patentable over Levine for the same reasons discussed above with respect to claim 14.

In paragraphs 3 and 4 of the Office Action, claims 1, 2, 8 and 14-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Levine in view of U.S. Patent No. 3,958,968 (Hosaka). The Examiner states:

Levine discloses a claimed invention except for the auger 116 being rotated by variable speed motor. Hosaka teaches an ice cream maker having a stirrer 10 rotated by a variable speed motor. See column 3, lines 60-65. It would obvious to provide Levine with a variable speed motor for the auger, in view of Hosaka, for the purpose of making more than one type of ice cream.

Applicant respectfully traverses the rejection.

Claim 1 has been amended to recite a feature related to the speed control. Claim 1 recites that the speed control allows the motor to be ramped up from a zero speed across the spectrum to a production speed. The present application states:

Variable speed motor driver circuit 48 provides significant advantages. Circuit 48 can allow motor 46 to start at a lower rpm and ramp up to the required rpm, thus reducing mechanical component wear. . . . Further, the use of circuit 48 can allow for soft starts and stops as well as limiting motor 46 to reduce quick

starts and stops . . . Further still, circuit 48 can allow infinite adjustments of motor speeds, thereby providing benefits described above and operation in allowing the user to personalize settings

See present application, paragraph 34.

In direct contrast, neither Levine nor Hosaka disclose such a feature. The section of Hosaka cited by the Examiner describes only two velocities. A velocity for cleaning and mixing at 110 rpm and a velocity for removing product at 247 rpm. See, Hosaka, col. 3, lines 53-68. Hosaka does not show, describe or suggest the ramping up from a zero speed across a spectrum of two or more speeds to a production speed. Levine fails from the same deficiency. Accordingly, claim 1 and its dependent claims 2-3 are patentable over Levine and Hosaka.

Claim 8 depends from claim 4. Claim 4 recites an inclusions input. Therefore, claim 8 is patentable over Levine and Hosaka for the same reasons claim 14 is patentable.

Independent claim 14 has been amended to recite a feature related to the ice cream input and the inclusions input. As discussed above with respect to the rejection of claim 4, Levine does not show, describe or suggest such feature. In addition, Hosaka does not show, describe or suggest such a feature. Accordingly, it is respectfully submitted that claim 14 and its dependent claims 15-17 are patentable over the cited art.

In paragraph 5 of the Office Action, claim 3 is rejected under 35 U.S.C. § 103 as being unpatentable over Levine in view Hosaka and in view of U.S. Patent No. 4,438,634 (Merle). The Examiner states:

Merle et al. teaches a freezer which includes a stirrer rotated by a variable speed motor which is controlled by a rheostat to thus provide a continuous spectrum of speeds. See col. 3, lines 23-32. It would be obvious to provide Levine as modified by Hosaka with a continuous spectrum of variable speeds . . . in view of the teachings of Merle et al. for the purpose of providing a wide variety of speeds in which to choose from.

Applicant respectfully traverses the rejection.

Claim 3 is dependent upon claim 1. Merle does not provide for the deficiencies of Levine and Hosaka with respect to claim 1. In particular, Merle does not show, describe or suggest a variable speed control or discuss ramping up to a production speed. Accordingly, claim 3 is patentable over Merle, Hosaka and Levine.

In paragraph 6 of the Office Action, claims 7, 9-13 and 23 are objected to as being dependent upon a rejected base claim. The Examiner has indicated that claim 7, 9-13 and 23 would be allowable if rewritten in independent form.

To advance prosecution, Applicant has amended claims 7 and 10 to be in independent form. Accordingly, independent claim 7 and independent claim 10 and its dependent claims 11-13 are patentable over the cited art.

Claim 23 has also been amended to be in independent form. Accordingly, it is respectfully submitted that claim 23 is allowable over the prior art. Claims 7, 10 and 23 have also been amended to correct minor drafting errors.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

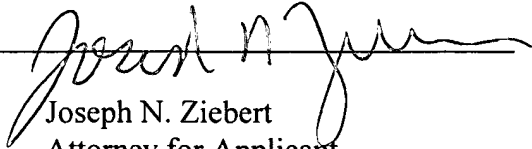
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers

submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 2-17-05

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